

ISSUE DATE: June 25, 1996

DOCKET NO. P-5323/NA-96-193

ORDER GRANTING CONDITIONAL CERTIFICATE OF AUTHORITY

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs  
Tom Burton  
Marshall Johnson  
Dee Knaak  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Petition by McLeod  
Telemanagement, Inc. for Authority to  
Provide Local and Long Distance Services as  
a Telecommunications Carrier in Minnesota

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**PROCEDURAL HISTORY**

On February 27, 1996, McLeod Telemanagement, Inc. (McLeod or the Company) filed a request for a certificate of authority to provide local and long distance services in Minnesota. The petition was filed pursuant to Minn. Stat. § 237.16, subds 10 and 11, the statutes governing interim Commission grants of authority to provide service, prior to the Commission's adoption of rules governing local competition.

Between March 28 and April 15, 1996, US WEST Communications, Inc. (US WEST), Contel of Minnesota, Inc. d/b/a GTE Minnesota (Contel), and United Telephone Company of Minnesota (United) filed petitions to intervene.

On April 11 and April 29, 1996, the Department of Public Service (the Department) filed comments recommending Commission approval of McLeod's application, subject to certain conditions.

On April 11, 1996, US WEST filed comments.

On April 23 and May 29, 1996, McLeod filed reply comments.

The matter came before the Commission for consideration on June 11, 1996.

**FINDINGS AND CONCLUSIONS**

**I. THE PETITIONS TO INTERVENE**

Although Contel, GTE, and US WEST filed petitions to intervene, only US WEST filed comments on the merits of the proceeding.

No party filed an objection to any of the intervention petitions.

Under Minn. Rules, part 7829.0800, subp. 5, if there is no objection to an intervention petition and the petition is not suspended or denied within 15 days of its filing, or referred to the Office of Administrative Hearings for contested case proceedings, the petition must be considered granted. The three petitions for intervention are therefore considered granted under the rule.

## **II. MCLEOD'S REQUEST FOR A CERTIFICATE OF AUTHORITY**

### **A. The McLeod Proposal**

McLeod applied for a certificate of authority to provide local and long distance services in Minnesota as a telecommunications carrier, pursuant to Minn. Stat. § 237.16, subd. 1. McLeod proposed offering local service through the resale of Centron services in selected US WEST exchanges. McLeod also applied to resell statewide long distances services, such as MTS, 800, operator services and travel card.

### **B. Comments of the Parties**

#### **1. US WEST**

In its written comments, US WEST raised a number of objections and concerns regarding McLeod's application. Issues raised by US WEST included the following:

- the application does not indicate that McLeod will conform to state and federal requirements to provide intraLATA and interLATA dialing parity
- McLeod must demonstrate its ability to conform to competitively neutral business practice requirements to which US WEST is held
- McLeod must show its compliance with the key sections of Chapter 237 of the Minnesota statutes, including rates and offerings that are fair, reasonable and nondiscriminatory, the filing of maps for intended service areas, and the submission of an incremental cost study showing that all rates for competitive services cover the incremental cost of the services
- any certificate for McLeod should restrict the Company from reselling residential service as a different class of service or reselling any US WEST service that is priced below cost
- McLeod's illustrative tariff makes no distinction between metro and outstate rates, or between business and residential rates

#### **2. The Department**

The Department noted that McLeod is a wholly-owned subsidiary of McLeod, Inc. McLeod, Inc. submitted audited financial statements for 1994 and unaudited consolidated statements for 1995, showing an improving trend in revenues and increase in capitalization. The Department also noted that the Company currently resells local and long distance services in Iowa and

Illinois, and long distance services in Nebraska. Its CEO has previously owned a successful long distance reseller, Teleconnect/Telecom\*USA.

The Department concluded that McLeod has the financial, managerial, and technical skills necessary to resell local and long distance services in Minnesota.

The Department stated that McLeod had filed the requisite information, including its toll-free customer inquiry number, and its compliance with customer deposit requirements under Minn. Rules, part 7810.1500-.1600, to be granted authority to resell long distance services.

The Department recommended that the Commission approve McLeod's request for a certificate of authority to provide local and long distance service as a telecommunications carrier, subject to the following conditions:

- the local service area is limited to US WEST's exchanges listed in the Company's application
- McLeod will be subject to the rules eventually adopted in the local competition rulemaking docket, No. P-999/R-95-53, pursuant to Minn. Stat. § 237.16, subd. 8
- local service other than resale is subject to Commission approval of interconnection agreements
- If McLeod offers its services on an individual case basis (ICB), under Minn. Stat. § 237.071, the Company must file each contract with the Department, including cost and rate information sufficient to show that rates exceed incremental costs by a reasonable margin

In reply comments, the Department noted that McLeod had stated in its own responsive comments that it would comply with all statutory requirements. While the Department believed that many of US WEST's concerns were answered by McLeod's anticipated compliance with relevant statutes, the Department had certain remaining concerns. The Department continued to believe that ICB contracts must contain enough information to show that the rates recover incremental costs. The Department recommended that McLeod be required to file further service area maps, with a level of detail consistent with Minn. Rules, part 7810.0500. The Department agreed with US WEST that McLeod's illustrative tariff raises questions about the Company's intention to provide intraLATA 1+ equal access; the Department recommended that McLeod clarify in its tariff sections 3.1.1 and 3.6.2 that it will provide intraLATA equal access. Finally, the Department noted that McLeod's illustrative tariff provides for a termination charge if a customer terminates service prior to the expiration of a term contract. The Department argued that early termination charges may be appropriate in the competitive long distance market, but are not appropriate in the local market, where competition is only beginning.

At the June 11, 1996 meeting, the representative of McLeod stated that the Company has no objection to filing maps with further detail or to providing sufficient cost information to show that ICB contracts contain rates which are above incremental costs.

## **C. Commission Action**

### **1. The Standards for Granting a Certificate of Authority**

The statutory standard for Commission approval of an application for authority to provide new service is found at Minn. Stat. § 237.16, subd. 1 (b):

No person shall provide telephone service in Minnesota without first obtaining a determination that the person possesses the technical, managerial, and financial resources to provide the proposed telephone services and a certificate of authority from the commission under terms and conditions the commission finds to be consistent with fair and reasonable competition, universal service, the provision of affordable telephone service at a quality consistent with commission rules, and the commission's rules.

### **2. McLeod's Application for a Certificate of Authority Considered under the Statutory Standards**

#### **a. The Necessary Technical, Managerial, and Financial Resources**

McLeod's filing demonstrates that it has sufficient financial backing and that its principals have the experience and expertise to provide the services included in the application.

The Commission agrees with the Department that McLeod satisfies the technical, managerial, and financial standards for a grant of authority under Minn. Stat. § 237.16, subd. 1(b). McLeod has satisfied the first part of the statutory requirements for certification.

#### **b. Other Standards for Certification under Minn. Stat. § 237.16, subd. 1(b)**

Under Minn. Stat. § 237.16, subd. 1(b), the terms and conditions under which the applicant will be certified must be consistent with fair and reasonable competition, universal service, the provision of affordable telephone service at a quality consistent with commission rules, and the commission's rules. These public interest standards in the second part of the certification statute require analysis of factors which extend beyond the Company's initial application.

Sections 251 and 252 of the federal Telecommunications Act of 1996 require state commission approval of network interconnection agreements. Because McLeod's application for local service authority extends only to the resale of Centron services, it is unclear at this time if additional agreements will be necessary. Agreements negotiated with providers would impact significantly on the standards for certification mentioned in Minn. Stat. § 237.16, subd. 1(b); the

Commission will therefore condition a certificate of authority for McLeod upon Commission approval of any future interconnection agreements.

The Commission also notes that McLeod's filing of actual tariffs (beyond the illustrative tariff included with the application) will bring the proposed terms and rates before the Commission, allowing the Commission to determine if the Company complies with the public interest factors of Minn. Stat. § 237.16, subd. 1(b). The Commission will therefore condition the certificate of authority upon Commission approval of the Company's filed tariffs. In order to comply with relevant statutes and Commission rules, the tariffs will be subject to certain conditions discussed in the following section of this Order.

Finally, under Minn. Stat. § 237.16, subd. 1(b), McLeod's authority, service offerings, and terms and conditions of service will be subject to the Commission's local competition rules being developed in rulemaking Docket No. P-999/R-95-53.

### **3. Specific Conditions of the Certificate**

#### **a. Introduction**

Although the Commission is conditioning McLeod's certificate of authority upon future Commission approval of any interconnection agreements and tariffs filed, the Company's initial filing and illustrative tariff have raised certain questions regarding the terms and conditions of future tariff filings which the Commission is prepared to address at this time. The Commission will discuss these issues in turn.

#### **b. Terms and Conditions of Tariff Filings**

InterLATA and IntraLATA Equal Access McLeod's tariffs must comply with previous Commission Orders<sup>1</sup> setting a January 1, 1997 deadline for the provision of intrastate intraLATA and interLATA equal access, and with Section 251(b) of the 1996 Act, which requires new entrants to provide dialing parity. In its April 23, 1996 reply comments, McLeod stated that it will be required to offer, and will offer, its customers the option of choosing another intraLATA long distance carrier as of January, 1997. The Commission will make McLeod's compliance with state and federal requirements regarding intraLATA and interLATA equal access a condition of the Company's certificate of authority.

Termination Liability Provisions The Commission agrees with McLeod that it need not exclude termination liability provisions from future tariffs governing the terms and conditions

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<sup>1</sup> In the Matter of an Investigation into IntraLATA Equal Access and Presubscription, Docket No. P-999/CI-87-697, ORDER ESTABLISHING US WEST BUSINESS PRACTICES FOR INTRALATA PRESUBSCRIPTION (January 12, 1996); In the Matter of a Commission Initiated Investigation to Establish Requirements for the Telecommunications Infrastructure in Minnesota, Docket No. P-999/CI-93-1176, ORDER APPROVING SHORT-TERM AND INTERMEDIATE INFRASTRUCTURE RECOMMENDATIONS AS MODIFIED AND ESTABLISHING A COMMENT PERIOD (May 19, 1994).

of local service. Although the Commission rejected US WEST's proposed termination liability provision in Docket No. P-421/EM-95-1245, the facts in that docket differ from McLeod's case: US WEST is a monopoly incumbent local provider, while McLeod is a new entrant into the local market. McLeod cannot use its position as a monopoly provider to leverage customer acceptance of this term of service. Under McLeod's proposal, customers would have reasonable information regarding options and risks, including any termination liability provision, before choosing whether to sign up with McLeod as an alternative provider. The Commission also notes that McLeod is offering customers a sixty-day trial period under which a customer may terminate service at no cost if the customer is not satisfied with the service.

The Commission will not preclude the use of termination liability provisions in future McLeod local service tariffs.

Interest on Customer Deposits McLeod's illustrative tariff does not include a provision for the refund of accrued interest on customer deposits. Such a provision is required under Minn. Rules, part 7820.4500, and must be included in future local service tariff filings.

### **c. Service Area Maps**

McLeod has expressed willingness to allay the Department's concerns by filing more detailed service area maps, as required in Minn. Rules, part 7810.0500. The Commission will include McLeod's compliance with service area map requirements as a condition of certification.

## **D. Conclusion**

The Commission has determined that McLeod possesses the requisite managerial, technical, and financial abilities to provide service in Minnesota. The other essential standards under Minn. Stat. § 237.16, subd. 1(b) can only be demonstrated through the Company's filed tariffs and interconnection arrangements with incumbents. The Commission will therefore grant McLeod a conditional certificate of authority, contingent upon eventual Commission approval of the Company's filed tariffs and interconnection arrangements. The Company's authority, service offerings, and terms and conditions of service will be subject to the Commission's local competition rules being developed in rulemaking Docket No. P-999/R-95-53.

In this Order, the Commission has resolved certain issues raised by the parties by imposing conditions upon future tariffs filed by McLeod pursuant to this application. The tariffs must demonstrate conformity with interLATA and intraLATA equal access requirements; ICB contracts must contain cost information showing that rates are above incremental costs of service; pursuant to Minn. Rules, part 7820.4500, tariffs must include a provision for the refund of accrued interest on customer deposits. In addition to its tariff requirements, McLeod must file more detailed service maps, pursuant to Minn. Rules, part 7810.0500.

With the exception of the issues noted, most of the issues raised by US WEST in this docket are covered by McLeod's general obligation to conform to relevant statutes, Commission Orders and rules, or will be more appropriately addressed in the local competition rulemaking docket. At this time, the Commission will confine its specific requirements for future McLeod tariffs to the issues discussed in this Order.

### **ORDER**

1. The Commission grants McLeod a conditional certificate of authority to provide statewide long distance service and local service in certain US WEST exchanges listed at Attachment A to the Company's February 27, 1996 filing. The Company's authority, service offerings, and terms and conditions of service will be subject to the Commission's local competition rules being developed in rulemaking Docket No. P-999/R-95-53. The certificate is conditioned upon Commission approval of interconnection arrangements and Company tariffs, including the following specific requirements for future tariffs:
  - a. If ICB pricing is used, the filing of the contracts, including cost and rate information showing that rates are above incremental costs of the service;
  - b. Provision for equal access to intraLATA and interLATA providers in accordance with both federal law and Commission Orders, including the Commission's January 1, 1997 deadline for intraLATA 1+ equal access;
  - c. Provision for accrued interest on customer deposits pursuant to Minn. Rules, part 7820.4500.
2. Within 60 days of the date of this Order, McLeod shall file detailed service area maps conforming to Minn. Rules, part 7810.0500;
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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